IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

State of Rajasthan and others.
vs.
Smt. Saroj Devi and another.

S.B.CIVIL SECOND APPEAL NO.81/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 16.1.2004 PASSED BY SHRI SRIKRISHAN JOSHI, ADDITIONAL DISTRICT JUDGE NO.2, BIKANER IN CIVIL APPEAL DECREE NO.18/2003 (6/2001)

DATE OF JUDGMENT ::: 19.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, AGA, for the appellants.
Mr. DD Chitlangi, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff's case before the trial court was that a piece of land was sold by Gram Panchayat, Kalu,

Tehsil Loonkaransar, District Bikaner to one Asha Ram s/o Nandram Bairagi on 1.3.1974 and the possession was also given to him. On 15.4.1977, the plaintiff purchased the said property by registered sale deed and took possession of the property after paying consideration of Rs.2,000/-. It is stated that thereafter, the plaintiff went to Bhutan and in the year 1985, when she came back, she found that the defendants included the plaintiff's land in their school land by raising construction of boundary wall. The plaintiff, therefore, filed the suit for possession in the trial court.

The defendant submitted written statement and stated that the land in dispute was gifted to the school by Gram Panchayat, Kalu by executing registered gift deed dated 13.7.1990 and the defendant got possession from the Gram Panchayat.

Two courts below concurrently decided question of fact in favour of the plaintiff and decreed the suit of plaintiff for possession. Hence, this appeal by the defendants against the judgment and decree of the trial court dated 7.8.2000 and appellate judgment and decree dated 16.1.2004.

According to learned counsel for the appellants, the plaintiff herself did not appear in the witness box and her power of attorney appeared to give evidence. It

is also submitted that even power of attorney was given during pendency of the suit, therefore, he was not competent witness. It is also submitted that the trial court had no jurisdiction to hear the suit as the valuation of the property was much more than the pecuniary jurisdiction of the trial court. It is also submitted that even the Gram Panchayat's patta was cancelled by the Additional Collector in the revision petition on the ground of procedural lapses and, therefore, the plaintiff's predecessor's title itself stood cancelled.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below as well as the record of the case.

It is not in dispute that originally the patta was issued by the Gram Panchayat in favour of Asha Ram on 1.3.1974. Said Asha Ram sold the land to the plaintiff on 15.4.1977 by registered sale deed. The defendants obtained the gift deed from the Gram Panchayat on 13.7.1990. At the time when the gift deed was executed in favour of the defendants i.e. on 13.7.1990, admittedly, the patta dated 1.3.1974 and sale deed dated 15.4.1977 were validly executed documents. It is not in disputed that the patta dated 1.3.1974 of Gram Panchayat was cancelled on 24.7.2002 during pendency of

the suit filed by the plaintiff and further important fact is that the plaintiff in whose name the property was standing was not party in the said proceedings for cancellation of patta, therefore, the said order of cancellation cannot be enforced or used against the plaintiff which was passed at the back of the plaintiff and that too during the pendency of the suit by the District Collector through whom the defendant no.1 State of Rajasthan was party in the suit.

So far as the evidence of power of attorney is concerned, it is true that the power of attorney can give statement on the basis of his personal knowledge and not merely on the basis of the power of attorney but in the present case, the facts of issuing patta in favour of Asha Ram is not in dispute and the plaintiff proved the sale of land by Asha Ram to her. In view of the above, because of non-examination of the plaintiff, the merit of the case has not been affected adversely against the plaintiff due to admitted facts.

So far as objection of pecuniary jurisdiction is concerned, admittedly that was not raised before the trial court and first appellate court and that objection is dependent upon facts. The property was purchased by the plaintiff on 5.4.1977 for a consideration of Rs.2,000/- only and the suit was filed

in the year 1995 and the defendants did not plead that on the date of filing of the suit, the value of the property reached beyond the pecuniary jurisdiction of the trial court. Therefore, this objection cannot be raised at second appellate stage.

Learned counsel for the respondent no.1/plaintiff stated that the respondent no.1/plaintiff has already taken possession in execution of the decree. In view of the above also, I do not find any reason to entertain this second appeal.

In view of the above, I do not find any substantial question of law involved in this appeal and this second appeal deserves to be dismissed.

(PRAKASH TATIA), J.

S.Phophaliya